

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC C. JAKSTADT, MICHAEL L. WATERSTON,
VASANTHA BADARI and JARROD E. PFOST

Application 09/747,308

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on November 8, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed February 7, 2006 does not list the Evidence Relied Upon in the rejections of the appealed claims. On page 2 of the Examiner's Answer beneath the heading **(8) Evidence Relied Upon** the examiner states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal."

The examiner is directed to the Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) which states in part:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e-g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The examiner's § 102(e) rejection is based wholly or in part on U.S. patent 6,408,284 to Hilt (prior art), and this reference along with any other evidence relied upon in the rejections has to be listed accordingly beneath the Evidence Relied Upon heading.

Correction is required.

Another matter that requires the examiner's attention before returning the application to the BPAI are the Information Disclosure Statements (IDS's) filed May 30, 2006 and September 5, 2006. It is unclear as to whether the examiner has considered the IDS's as the examiner has not initialed and dated the 1449's of the IDS's to indicate consideration of same.

Accordingly, it is

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ORDERED that the application is returned to the Examiner

- a) to issue a revised Examiner's Answer listing the evidence relied upon in the rejection(s) of the appealed claims,
- b) for proper consideration of the IDS's filed May 30, 2006 and September 5, 2006, and
- c) for such further action as may be appropriate.

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DMS/vsh

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